



## SUMMARY OF NEW YORK'S DAILY FANTASY SPORTS LEGISLATION

By: Veronica Rose, Chief Analyst

### KEY POINTS OF NEW YORK'S DAILY FANTASY SPORTS LEGISLATION

Interactive fantasy sports offered in accordance with the law do not constitute gambling, which, with certain exceptions, is expressly prohibited under the New York Constitution.

DFS games or contests cannot be based on any prohibited sports event, including high school or college sports.

DFS operators must (1) pass national criminal history checks, (2) register with the state, and (3) implement a range of consumer protection measures.

Tax revenue raised from DFS operations goes to fund education.

### ISSUE

New York's Interactive Fantasy Sports Legislation.

### SUMMARY

A bill signed into law (Chapter 237) by Governor Cuomo on August 4, 2016 legalized interactive fantasy sports (commonly called daily fantasy sports (DFS)) in New York State.

Daily fantasy sports are competitions in which people compete online with other players for prizes by building a team of professional athletes from a particular league or competition and earn points based on their chosen athletes' on-field performance.

The new law gives the New York State Gaming Commission regulatory oversight over the industry and requires it to adopt implementing regulations, which must include "responsible protections with regard to compulsive play and safeguards for fair play."

The law requires DFS operators to register with the commission every three years. Any operator (FanDuel and Draft Kings) who was offering DFS before November 10, 2015 (the date the attorney general ordered DFS operators to cease and desist operations) may continue to do so under a temporary gaming commission permit until its registration application is approved or denied.

The legislation requires DFS operators to implement numerous consumer protection measures. These include the following:

1. prohibiting, among others, people employed by DFS operators, athletes whose performance may be used to determine the outcome of a contest, and people under age 18 from participating in DFS contests;
2. enabling participants to permanently exclude themselves from DFS contests;
3. prohibiting advertisements that target minors, self-excluded persons, or prohibited persons from participating in DFS contests;
4. requiring operators to state clearly and conspicuously in all advertisement the odds of winning individual contests;
5. prohibiting games on college and high school sports; and
6. limiting the number of entries each participant may submit in any contest.

Each DFS registrant must pay a 15% tax annually on gross revenue generated within the state and an additional 0.5% tax capped at \$50,000 annually. The tax revenue must be used to fund public education through the state lottery's education fund.

This report summarizes the major provisions of the legislation, which addresses registration, regulation, and taxation.

## **WHAT ARE DFS?**

### ***Definition***

The law legalizes DFS through the registration and regulation of interactive fantasy sports contests, which the law defines as follows:

a game of skill wherein one or more contestants compete against each other by using their knowledge and understanding of athletic events and athletes to select and manage rosters of simulated players whose performance directly corresponds with the actual performance of human competitors on sports teams and in sports events.

According to the legislative findings, interactive fantasy sports contests are not games of chance because they

consist of fantasy or simulation sports games or contests in which the fantasy or simulation sports games or contests in which the fantasy or simulation sports teams are selected based upon the skill and knowledge of the participants and not based on the current membership of an actual team that is a member of an amateur or professional sports organization.

They are not “wagers on future contingent events not under the contestants’ control or influence because contestants have control over which players they choose and the outcome of each contest is not dependent upon the performance of any one player or any one actual team.”

### ***Prohibited Games***

The law requires registrants to ensure that no games or contests are based on a prohibited sports event. It explicitly prohibits contests based on high school and college sports.

### ***Prohibited Players***

The law prohibits the following people from participating in DFS games or contests:

1. members, officers, employees, or agents of operators or registrants;
2. any spouse, child, brother, sister, or parent living in the same household in the principal residence of any member, officer, employee, or agent of an operator or registrant;
3. any individual with access to non-public confidential information about contests;
4. any amateur or professional athlete whose performance may be used to determine the outcome of a contest;
5. any sports agent, team employee, referee, or league official associated with any sport or athletic event on which contests are based;
6. any individual located in a state where DFS is expressly prohibited; and
7. minors.

## **REGISTRATION REQUIREMENTS**

The law requires anyone administering, managing, or otherwise making DFS available to people in New York to register with the New York Gaming Commission. Operators offering contests before November 10, 2015 may continue to do so until their registration application has been approved, provided they get a temporary permit and file an application with the commission within 90 days after the regulations take effect. The registration is renewable every three years.

### ***Eligibility for Registration***

To be eligible for registration, an applicant must pass a national criminal history record check. The commission must deny or suspend, refuse to renew, or revoke any existing registration if the applicant or owner has

1. knowingly made a false statement of material fact or deliberately failed to disclose any information required by the commission;
2. had a DFS registration or license denied, suspended, or revoked in any state or country for just cause;
3. legally defaulted in the payment of a debt or obligation due to any state or political subdivision; or
4. knowingly failed to comply with the DFS law or commission's regulations.

## **CONSUMER PROTECTIONS**

The law establishes minimum safeguards and measures that DFS operators must implement as a condition of registration, including consumer protection measures. These affect minors, compulsive gambling, security issues, transparency, advertising, and other issues.

### ***Minors***

DFS operators and registrants must institute measures to prohibit minors from participating in DFS contests.

1. They must take appropriate steps to confirm that a person opening an account is not a minor.
2. A registrant who becomes aware that a minor has participated in any of its contests must promptly, within two business days, refund any deposit received from the minor, provided any such refund may be offset by prizes awarded.

3. Registrants must publish and facilitate parental control procedures to allow parents or guardians to exclude minors from access to DFS contests or platforms, including a toll-free number to call for help in establishing parental controls.

### ***Compulsive Gambling***

DFS registrants and operators must implement the following measures, some of which are specifically aimed at protecting compulsive gamblers:

1. enable players to exclude themselves from contests and take reasonable steps to prevent them from entering contests from which they have excluded themselves;
2. list on each website, in a prominent place, information about compulsive play in New York State, including a toll free number directing callers to reputable, free resources containing further information;
3. limit each player to one active and continuously used account and permit players to permanently close accounts registered to them at any time and for any reason;
4. prevent prohibited players from maintaining accounts or participating in contests;
5. limit the number of entries any participant may submit in a contest to a maximum of 150 or 3% of the total number of entries submitted by all players, whichever is less.

### ***Security***

DFS registrants and operators must implement measures to protect the online security of players and accounts. They must ensure that players' funds are protected and segregated from the operating funds of operators and registrants and otherwise protected from corporate insolvency, financial risk, or criminal or civil actions against such operators or registrants.

### ***Disclosures, Transparency, and Game Integrity***

DFS registrants and operators must do the following:

1. disclose the maximum number of entries allowed for each contest and the number of entries a single player may submit to each contest;
2. ensure that the value of prizes and awards are established and well known in advance of the contest, and the value is determined by the number of players or the amount of entry fees paid by players;

3. ensure that winning outcomes reflect the relative knowledge and skill of players and are determined predominantly by accumulated statistical results of the performance of individuals in sporting events;
4. ensure that no winning outcome is based on the score, point spread, or performance of a single sports team, or any combination of such teams;
5. ensure that no winning outcome is based solely on any single performance of an individual athlete in a single sport or athletic event;
6. identify all highly experienced players in any contest by a symbol attached to such players' usernames, or by other easily visible means on all platforms supported by such operator or registrant;
7. offer introductory procedures for players that are prominently displayed on the registrant's or operator's main page or platform that explain contest play and how to identify a highly experienced player; and
8. ensure that measures are in place to deter, detect and, to the extent reasonably possible, prevent cheating and the use of cheating devices.

### ***Advertising***

The law prohibits unfair and misleading advertising about average contest winnings. It specifically requires registrants and operators to implement the following measures:

1. When referencing the chance or likelihood of winning in advertisements, or upon contest entry, make clear and conspicuous statements that are not inaccurate or misleading about the chances of winning.
2. Advertisements, at a minimum, must include the median and mean net winnings and the percentage winnings awarded to highly experienced players participating in contests within the preceding calendar year.
3. Advertisements must not target prohibited participants, minors, or self-excluded persons.

### ***Accounts and Recordkeeping***

DFS registrants must:

1. offer players access to their account history and account details and
2. maintain records of all accounts belonging to players for five years from the date the account was created.

### ***Player Complaints***

Operators and registrants must develop and prominently display on the main page of their platform procedures for players to file complaints.

### **POWERS AND DUTIES OF THE COMMISSION**

The commission must promulgate implementing regulations. Among other things, it must:

1. issue DFS regulations;
2. review and approve DFS platforms and contests;
3. accept and investigate player complaints; and
4. investigate violations of the law and initiate enforcement proceedings, when necessary.

The commission may also conduct financial audits of registrants to ensure compliance.

The law requires each DFS registrant to pay a 15% tax on gross revenue generated within the state and an additional 0.5% tax capped at \$50,000 annually. The commission may assess an additional amount to cover its actual cost of regulating DFS in the previous year.

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